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Timothy Sendak



PROBATE CODE STUDY COMMISSION

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MEETING MINUTES¹

Meeting Date: October 18, 2007
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Joseph Zakas, Chairperson; Rep. Ralph Foley; Joseph H. Davis; Kris Fruehwald; Thomas Hardin; James Martin; David Pendergast; Dan Reeves; Timothy Sendak.

Members Absent: Sen. Brent Steele; Sen. John Broden; Rep. Trent Van Haaften, Vice-Chairperson; Rep. Jeb Bardon; Chris Colpaert; Ora Kincaid; Judge Thomas Lowe.

Senator Joseph Zakas called the meeting to order.

Senator Tim Lanane briefly addressed the Commission to share his views on improving the oversight of guardianships in Indiana. Senator Lanane recommended requiring guardians to file annual accountings with the probate courts rather than the biennial accountings required by current law. Senator Lanane also noted that some states require

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more than a financial accounting from guardians and require reports on the well being of protected persons. Senator Lanane submitted to the Commission a compilation of recent findings and recommendations made by the AARP concerning state and federal guardianship laws (Exhibit A).

Senator Lanane introduced Mr. Dan Skinner and Mr. Dennis Lanane to the Commission. Both Mr. Skinner and Mr. Lanane have been actively involved in elder law issues in Madison County. The two men described some of the cases that they have become involved with to underscore their position that more oversight of guardians is necessary. Both were frustrated because it seemed to them that neither the courts nor state government had fully investigated these cases.

Sen. Zakas asked probate attorney Jeff Kolb for his thoughts on the testimony of Mr. Skinner and Mr. Lanane. Mr. Kolb replied that monitoring guardianships is a good issue. Mr. Kolb said that because it is the business of the courts to settle disputes most cases will not receive the attention of the courts until a dispute arises. The Commission then discussed who has standing to petition the court on a guardianship issue. Commission member Thomas Hardin praised Mr. Skinner and Mr. Lanane for their advocacy on behalf of protected persons and urged them to petition the court themselves, if necessary, when they see a protected person being harmed by a guardian's actions. The members of the Commission also emphasized the importance of local court rules in the oversight of guardianships.

Senator Zakas urged Senator Lanane to file a resolution recommending that the Legislative Council direct the Commission to study guardianships at more length in the 2008 interim. Senator Zakas also urged the Indiana Judges Association and the Indiana Judicial Center to study the issue.

The Commission then concluded its business for the 2007 interim by discussing the following preliminary drafts (PDs):

- PD 3105 concerning funeral planning.
- PD 3114 concerning the signing of a power of attorney.
- PD 3116 concerning the delegation of parental authority.
- PD 3268 concerning the abatement of beneficiary interests when a trust has insufficient assets to fully satisfy all beneficiary interests.
- PD 3270 concerning access to safe deposit boxes.
- PD 3275 concerning property tax benefits for qualified personal residence trusts.

Each draft was then adopted for the purpose of recommending its passage to the General Assembly by a unanimous voice vote. Only PD 3116 was changed as the Commission accepted the motion of Commission member Timothy Sendak to change the maximum period of the parental delegation of authority from six months to twelve months and to explicitly make the delegation subject to the parent's ability to revoke the delegation.

Senator Zakas adjourned the meeting at 2:45 p.m.